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No. 06-603

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In The

Supreme Court of the United States

IRVING N., DAWN N., AND SANDRA N.,

Petitioners,

v.

RHODE ISLAND DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES

On Petition For A Writ Of Certiorari To The Supreme Court Of Rhode Island

BRIEF IN OPPOSITION

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTRODUCTION	1
PROCEDURAL TRAVEL OF THE CASE	2
STATEMENT OF FACTS	3
LEGAL ARGUMENT	12
REASONS TO DENY PETITION	12
A. The Decision of the Rhode Island Supreme Court Does Not Conflict With the ADA Nor With This Court's Decision in the *Yeskey* Case	12
B. The Americans with Disabilities Act ("ADA") is Not Directly Applicable to Termination of Parental Rights Proceedings	14
C. The Americans with Disabilities Act Does Not Provide a Defense to Termination of Parental Rights Proceedings	21
D. The Few Courts That Have Stated That a Termination of Parental Rights Proceedings is an Activity Within the Meaning of the ADA Have Either Been Overturned or Have Found No Violation of the Act	24
E. The Rhode Island State Court Did Not Violate the ADA by Failing to Consider Permitting *Sandra N.* to Adopt Kayla	28
CONCLUSION	29

TABLE OF AUTHORITIES

Page

CASE LAW

In re Adoption of Gregory, 747 N.E.2d 120 (MA 2001) 16, 17, 18, 23

In re Anthony B., 735 A.2d 893 (CT. 1999) 18

In re B.S., Juvenile, 693 A.2d 716 (Vt. 1997) 19, 20

Castorr, et al. v. Brundage, et al., 459 U.S. 928 (1982) 29

In re Christopher B., 823 A.2d 301 (R.I. 2003) 26, 27, 28

Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432 (1985) 15

Consent to Adoption, 461 N.E.2d 186 (MA 1984) 17

Howard v. Department of Social Welfare, 655 A.2d 1102, 163 Vt. 109 (1994) 20

Jackson v. Indiana, 406 U.S. 715 (1972) 15

In the Interest of Doe, 60 P.3d 285 (Haw. 2002) 24

In the Interest of Jane Doe, 58 P.3d 78 (Haw. App. 2002) 24, 25

In re Jennifer G., 767 A.2d 682 (R.I. 2001) 26

In re Kayla F. and Brittany R., 692 A.2d 698 (R.I. 1997) 26

Pennsylvania Department of Corrections v. Yeskey, 524 U.S. 206 (1998) 1, 12, 13, 14

People ex rel. T.B., 12 P.3d 1221 (Colo. Ct. App. 2000) 17

In re Raymond C., et al., 864 A.2d 629 (R.I. 2005) 26

TABLE OF AUTHORITIES – Continued

Page

State ex rel., B.K.F., 704 So. 2d 314 (La. Ct. App. 1997) 18, 19

Stone v. Daviess County Div. of Children & Family Services, 656 N.E.2d 824 (Ind. Ct. App. 1995) 19, 20

Tennessee v. Lane, et al., 541 U.S. 509 (2004) 14, 15

In re Terry, 610 N.W.2d 563 (Mich. App. 2000) 20, 22, 23

In re Torrance P., 522 N.W.2d 243 (Wis. Ct. App. 1994) 19, 20

Youngberg v. Romeo, 457 U.S. 307 (1982) 15

RHODE ISLAND STATUTES

R.I.G.L. § 15-7-7(a)(2)(ii) 21

R.I.G.L. § 15-7-7(a)(3) 2

R.I.G.L. § 15-7-7(a)(4) 21

R.I.G.L. § 15-7-7(b) 21, 26

OTHER STATUTES

42 U.S.C. § 671(a)(13) 2

42 U.S.C. § 675 2

42 U.S.C. § 12102(2) 20

42 U.S.C. § 12131-12134 ..... *passim*

28 C.F.R. § 35.104(1) 20

Hawai'i Revised Statute (HRS) § 587-73 (1993) 25

MCL 712A. 18f(1)(b) 22

MCL 712A. 18f(4) 22

TABLE OF AUTHORITIES – Continued

Page

MSA 27.3178 (598.18f(1)(b) 22

MSA 27.3178 (598.18f(4)..... 22

INTRODUCTION

The Petitioners have presented no "compelling reasons" sufficient for this Court to grant their Petition for a Writ of Certiorari. *See Supreme Court* Rule 10. In this matter, the Rhode Island Supreme Court has not decided an important federal question in any way that conflicts with the decision of another state court of last resort, or of a United States court of appeals, or conflicts with any decision of this Court. *See Supreme Court* Rule 10(b) and (c).

The Petitioners urge this Court to grant their Petition based upon the fact that the Rhode Island Supreme Court has agreed with other high state courts in determining that a termination of parental rights proceeding is not the "sort of service, program, or activity that would be governed by the dictates of the ADA." *See* Pet. App. 11a. This decision, however, does not conflict with other state courts, nor does it conflict with any decision of this Court. The Petitioners also argue that this decision by the Rhode Island Supreme Court conflicts with this Court's decision in the *Yeskey* case. However, a review of the facts of *Yeskey* will reveal that the decisions are not in conflict and are distinguishable.

The Petitioners further argue that the issue of whether the ADA applies to termination proceedings, has confused the lower courts. A review of the lower court decisions will reveal that there is no confusion. Most lower courts have determined that the ADA does not apply to the actual termination proceedings. A few courts have indicated that a termination proceeding may be an activity falling within the meaning of the ADA. However, all of the state courts are consistent in concluding that the ADA already applies to the services offered to the parents prior

to the institution of the termination proceedings, and thus the ADA is not a defense to termination of parental rights proceedings. Moreover, the Petitioners fail to reveal to this Court that even in the lower court cases which indicate the ADA may apply to termination proceedings, the outcomes remain the same.

In essence, pursuant to the Adoption and Safe Families Act[1] and applicable state law, all the lower courts are obligated to review the delivery of services offered by the State to the family during the reunification process, notwithstanding whether the ADA applies to the actual termination of parental rights proceeding.

PROCEDURAL TRAVEL OF THE CASE

On January 10, 2002, the Department of Children, Youth and Families (hereinafter "DCYF") filed a termination of parental rights petition ("TPR") against Irving N. and Dawn N., the biological parents of Kayla N. Kayla was born April 13, 2000. The termination petition alleged that Kayla had been in the custody of DCYF for a period of at least twelve months; that the parents were offered and received services to rectify the situation which led to Kayla's placement, and that there was not a substantial probability that Kayla would be able to return safely to her parents' care within a reasonable period of time considering her age and need for a permanent home. *See R.I.G.L.* § 15-7-7(a)(3) at App. 33.

[1] *See* 42 U.S.C. § 671(a)(13); *see also* 42 U.S.C. § 675.

In April of 2002, while the TPR was pending, a paternal aunt, Sandra N. filed an Adoption Petition with the Family Court. The biological parents consented to Kayla's adoption by Sandra N. However, the child Kayla had already been living with her foster family and half-sister for two years at that point.

By order of the Rhode Island Supreme Court,[2] the adoption hearing was consolidated with the TPR trial. On January 22, 2003, the Rhode Island Family Court found by clear and convincing evidence that the parents were unable to safely and effectively parent their child and terminated their parental rights. App. 37-41. The Court denied the adoption petition filed by Sandra, as the child had been in the care of her current foster family in excess of two (2) years at that point and was very attached to her sister as well as to her foster parents. Pet. App. 54a.

An appeal was docketed in the Rhode Island Supreme Court on July 18, 2003 and the Rhode Island Supreme Court affirmed the decision of the trial court. In said decision the Rhode Island Supreme Court specifically noted the following:

> "If Kayla could thrive solely on her parents' love, the hearing justice's analysis of her best interests may have been different. In our view, however, that, far from undervaluing the parents' love in the instant case by resorting to an 'insensitive, mechanistic process,' the hearing justice, who aptly described the case as one involving 'a situation which is fraught with heartbreaking emotions,' painstakingly articulated his findings

[2] Order; Bourcier, J. 5/23/02, at App. 42.

> in a very comprehensive decision and reached a conclusion that we consider to be sustainable." Pet. App. 17a.

On October 30, 2006, the Petitioners filed the instant Petition for a Writ of Certiorari in this Court.

STATEMENT OF FACTS

The child, Kayla, came to the attention of the Rhode Island Department of Children, Youth and Families in April of 2000, upon her birth. The DCYF opened the case as to Kayla for several reasons. The mother, Dawn N., had prior involvement with the DCYF as to her first child, Michelle. Michelle was no longer in mother's custody when Kayla was born. The DCYF also received information that the maternal grandmother had threatened to kill the child Kayla, "and cook her and eat her." TR. 5/24/02 p. 22. DCYF believed that the child could not be placed at home due to what appeared to be "unsafe" conditions, coupled with the mother's "inability to care for her first child." Pet. App. 2a. At the Rhode Island Supreme Court, the Petitioners/parents argued that Kayla was wrongfully removed from their care at birth, however that issue was not properly before that court.[3]

[3] The Petitioners/Appellants argued that Kayla was initially wrongfully removed from her parents as she was "not in imminent danger," and the parents should have been able to take Kayla home from the hospital. A review of the Rhode Island Family Court record revealed that there was never an appeal of the Order of the Family Court removing the child from the parent's custody, nor was a Motion for Reunification ever filed. Yet, five years later, they argued that the child was erroneously removed from the parents' physical custody in

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Upon the birth of Kayla, the DCYF attempted to find a relative placement and inquired with the biological parents as to any relatives that could possibly care for Kayla. *TR.* I – 5/24/02 pp. 23, 24, 27. The DCYF considered Irving N's two recommendations of his niece, Cheryl Lopes, and his sister, Sandra N. The DCYF caseworker testified that she met with both of these relatives to determine if a relative placement was possible. She testified as follows:

> "Q. And what was their response?
>
> A. Miss Lopes had an active case at the time with the Department, so that precluded her from being a relative caretaker. And Mrs. (Sandra) N. said that she couldn't do it.
>
> Q. Did she indicate why she could not do it?
>
> A. At that time she said she wasn't prepared to care for a baby and that she felt that it would be good if we could place Kayla with her sister."

TR. I – 5/24/02 pp. 27, 28.

It must be noted that Sandra specifically expressed her inability to care for Kayla at that time. *TR.* I – 5/24/02 p. 27. On April 26, 2000, at the age of two weeks, Kayla was placed with her foster family, with whom she presently continues to live.

The first DCYF social worker assigned to this case was Tom Roberts. Mr. Roberts initially referred the parents to the Spurwink Program, which is designed for

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April of 2000. The issue was not properly preserved for appeal before the Rhode Island Supreme Court.

parents and children with developmental delays or cognitive limitations. Spurwink provided parent-aide services and supervised visitation for the parents and Kayla. *TR.* I – 5/24/02 p. 27. The Spurwink Program provided specialized parent-aide services to the parents shortly after the birth of Kayla in April of 2000 until January of 2001. All involved agreed that the Spurwink Program provided services specifically tailored to meet the needs of cognitively limited parents.

DCYF caseworker, Ms. Okai, took over the case in September of 2000. The Spurwink records indicated that both parents clearly love their child, but even with services in place they were unable to "provide a safe, nurturing and stable environment that Kayla needs to thrive." *See Spurwink Records,* App. 6. The Spurwink program then terminated their services due to safety issues and concerns. App. 6.

Ms. Okai testified that Kayla had become very bonded with her foster parents and her half-sister, who had been adopted by this same foster family. Nevertheless, Ms. Okai made additional referrals to assist these parents with their parenting abilities, including a referral for a parent aide on December 5, 2000 and for parent education on January 18, 2001. *TR.* I – 5/24/02 pp. 70, 71. She made another referral for parent education at the St. Mary's program on February 12, 2001. Ms. Okai also made a referral for a Child Developmental Center (CDC) evaluation for Kayla on April 10, 2001 and the Family Learning Center on April 2, 2001. *TR.* I – 5/24/02 p. 71.

The plan for services as established by the DCYF, which included the above outlined services, was often reviewed by the Rhode Island Family Court. Of critical

importance is that Kayla was formally committed to the custody of the DCYF, on February 7, 2001, only ***after*** the agreed upon parenting services were in place. *TR.* I – 5/24/02 pp. 16, 17.

With regard to the parent education program at the St. Mary's Home for Children, Irving, refused to participate. Ms. Okai testified as follows:

> "A. Well, the parent education program was specifically for Irving because he stated that he would participate in an education class.
>
> Q. Did he in fact participate?
>
> A. No, he did not.
>
> Q. Why not?
>
> A. On January 19, 2001, I spoke with Irving and he stated to me that he had spoken to his attorney and she told him he didn't have to do it."

TR. I – 5/24/02 p. 72.

Included in the reasonable efforts made to reunify this family were referrals made on behalf of the child, Kayla. Referrals were made to an Early Intervention program and the Child Development Center at Rhode Island Hospital.

Petitioners make mention of the Rhode Island Family Court assigning a different social worker to this case as a result of an issue with the John Hope Settlement House program. *See Petitioner's Brief* 3 n.1. Ms. Okai reported that she received a progress report from John Hope after a hearing on March 22, 2001. The Court ordered DCYF to assign a new caseworker when the parent's Counsel argued that Ms. Okai should have delivered the letter to

the Court even though the hearing had already taken place. Ms. Okai further testified that the letter at issue was not prepared by the worker who actually had observed the visits between Kayla and the parents. She testified, "[M]y concern was that the person who was responsible for doing the visits should be the one who's telling us how the family is doing." *TR.* III – 6/3/02 p. 44.

Nevertheless, the case was transferred to DCYF caseworker Amy Waluk in April of 2001 and services continued. Early Intervention services began in May of 2001. Ms. Waluk testified that the referral for Early Intervention had already been made by the previous worker, Ms. Okai. *TR.* VI – 7/25/02 p. 7. An Early Intervention worker diagnosed Kayla with global developmental delays and provided the parents with various activities to perform with Kayla to improve her concentration and fine motor skills. Ms. Waluk testified that she observed that the parents did not follow the advice properly, and would simply watch Kayla rather than interact with her. Ms. Waluk testified that she made referrals to the VNA Healthy Tomorrows Program and Project Early Start. These programs were specifically put in place to assist the parents in dealing with Kayla's medical issues and developmental issues. *TR.* VI – 7/25/02 p. 7.

Ms. Waluk also made a referral to the Children's Friends and Services program. *TR.* VI – 7/25/02 p. 8. Referrals were made for the parents to engage in parent/child evaluations at the Providence Center[4] and also for

[4] The parents underwent a parent/child evaluation in July of 2001. Christine Trendell, a Licensed Clinical Social Worker, who conducted the evaluation, observed: "In conjunction with parents' observed tendency to misread Kayla's cues are their own unique ways of dealing

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psychological evaluations. The parents did comply with all evaluations and consistently met with the worker from Partners in Permanency. Ms. Waluk also made a referral for mother to attend the Sexual Assault and Trauma Center so that she could receive counseling for her own issues of sexual abuse victimization as a child. *TR.* VI – 7/25/02 p. 8.

Lisa Granda, who was qualified as an expert in clinical social work, worked with the parents at the Children's Friends and Services program. *TR.* III – 6/3/02 p. 68. Ms. Granda had weekly sessions with the family.

Ms. Granda further testified that the primary focus of her program "was to work on parenting skills, to collaborate with the other service providers who were involved who were working with Dawn and Irving, such as Early Intervention and VNA, and really identify what the areas were that Dawn and Irving needed to focus on." *TR.* III – 6/3/02 p. 77. In her report, Ms. Granda stated "To date, the N's have been unable to effectively parent Kayla without continued supervision and ongoing interventions and directions." In Ms. Granda's clinical opinion, the parents' lack of progress was due to "their inability to learn and understand the information that's being provided to them and being able to provide safe parenting for their daughter." *TR.* IV – 6/7/02 pp. 31, 32.

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with the stressors that a toddler presents. Father is observed as becoming anxious in response to Kayla's behaviors, while mother appears to become removed, focusing on concrete tasks, such as diapering. These responses to Kayla's cues could and did result in Kayla's needs not being met."

Dr. Steven Hirsch, a clinical psychologist, conducted psychological evaluations on the parents in September and October of 2001. Dawn and Irving's reading skills were at fifth and third grade levels, respectively. Dr. Hirsch stated, "Mrs. N. is an extremely immature and self-centered woman whose capacity for bonding with the young child (given her personality profile) is extremely limited." App. 14. Dr. Hirsch further opined within a reasonable degree of psychological certainty that Irving's "emotional and cognitive functioning indicates that he has difficulty adequately caring for himself let alone the special needs of a developmentally delayed 18-month-old." App. 21. As a result of his psychological evaluations, Dr. Hirsch recommended that parental rights be terminated.

Psychiatric evaluations were also conducted on the parents. They were performed by Dr. David Savitsky in October of 2001. App. 22. He reported that Dawn was unable to describe Kayla's development or list any of her likes and dislikes. When asked to name the five most important people in his life, Irving did not mention either his wife or his daughter. Dr. Savitsky reported that Irving would not be able to provide Kayla with a "level of consistency and empathic response" that is required in light of her developmental delays. Dr. Savitsky noted that while Dawn may be able to learn limited parenting skills, her "lack of empathy and inability to use language truthfully and in flexible approaches to meeting her own needs, are likely to grossly impair her ability to effectively parent her daughter." App. 29.

Testimony on the Adoption Petition, filed by Sandra N., was taken prior to the Family Court's decision regarding the termination of Dawn and Irving's parental rights. Both parents testified that they wanted the aunt, Sandra

N., to adopt Kayla. Irving testified that he wished to maintain contact with Kayla and that adoption by Sandra was in Kayla's best interests. Upon further examination, Irving was unable to articulate why this was in Kayla's best interests. The only reason he was able to give was, "So I can see her once a month." *TR.* XI – 11/13/02 p. 10. When asked if he, on his own, or with his wife, could take care of Kayla, Irving stated "no." *TR.* XI – 11/13/02 pp. 10, 11. Dawn, however, testified that she believed that she and her husband could care for Kayla with help.

Sandra N. testified that after she began supervising visits between her brother, his wife and Kayla, she began to have doubts regarding his ability to care for the child. She stated:

> Q. Do you think your brother and his wife could take care of Kayla?
>
> A. "Not by themselves, no." *TR.* XI – 11/13/02 p. 34.

The foster father testified that should he ever adopt Kayla and she expressed an interest in seeing her biological parents, he would not object to that. The foster mother testified to the activities that she and her husband do with Kayla to develop her speech skills. She also described the closeness between Kayla and Kayla's half-sister, Michelle. Kayla remains in this same foster home where she has lived since April of 2000 and she is thriving in this home.

After hearing all the evidence, the Rhode Island Family Court ultimately determined that the parents could not safely parent Kayla and that it was in the best interests of Kayla to terminate the parental rights of the biological parents, so that Kayla could be adopted by the family who had cared for her in excess of two years.

Kayla's adoption has been held in abeyance since the filing of the instant Petition.

LEGAL ARGUMENT

REASONS TO DENY PETITION

A. The Decision of the Rhode Island Supreme Court Does Not Conflict With the ADA Nor With This Court's Decision in the *Yeskey* Case.

The Americans with Disabilities Act (hereinafter "ADA") provides that "[S]ubject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." *See* 42 U.S.C.S. § 12132.

In the case of *Pennsylvania Department of Corrections v. Yeskey*, 524 U.S. 206 (1998), the Petitioner/Department of Corrections sought review of an Order of the United States Court of Appeals for the Third Circuit, which reversed the trial court's ruling that the ADA was inapplicable to inmates in state prisons. The specific question before this Court was whether Title II of the Americans with Disabilities Act (ADA), which prohibits a "public entity" from discriminating against a "qualified individual with a disability" on account of that individual's disability, covers inmates in state prisons. In that case Mr. Yeskey was an inmate, sentenced to serve up to 36 months in a Pennsylvania prison. The sentencing court recommended that he be placed in a state Motivational Boot Camp for first-time offenders, the successful completion of which would have led to his release on parole in only six months.

See Yeskey, 524 U.S. 206, at 208. Because of Mr. Yeskey's disability, however, he was refused admission. He filed suit against the Commonwealth of Pennsylvania's Department of Corrections and several department officials, alleging that his exclusion from the Boot Camp violated the ADA.

In *Yeskey*, the Petitioners argued that state prisons were not covered by the ADA, due to the clear intent not to alter "the usual constitutional balance between the States and the Federal Government." Thus, arguing that the ADA must be interpreted to maintain the substantial sovereign power of the States to control and manage their state prisons. *See Yeskey*, 524 U.S. 206, at 209. The Petitioners argued that the exercising of control over state prisons is a traditional and essential state function necessary for the preservation of societal order. *Id.* Nevertheless, this Court concluded that state prisons "fall squarely within the statutory definition of 'public entity' which includes 'any department, agency, special purpose district, or other instrumentality of a State or local government.'" *Id.* at 210. In holding that the ADA extends to state prisons and their inmates, this Court stated that there existed no basis to distinguish the activities and services provided to prisoners as provided to other individuals, thus remanding the case for hearing on Mr. Yeskey's ADA discrimination claim, due to his exclusion from the state prison program.

In the matter at hand, the Petitioners rely heavily on the *Yeskey* case in arguing that the ADA applies to termination of parental rights proceedings, such reliance however is mistaken. In *Yeskey*, the petitioner was specifically *denied participation* in the Motivational Boot Camp prison *program*. The Pennsylvania state prison refused to allow Mr. Yeskey to participate in this program solely due to his medical disability. *Id.* at 208. The *Yeskey* case is not

on point to the within case, because neither Irving, nor Dawn were denied any services by the Rhode Island Department of Children, Youth, and Families. The Petitioners have not identified one service, program, or activity that they were denied the opportunity in which to participate.

Though the Department of Children, Youth, and Families (DCYF) itself falls squarely within the statutory definition of a public entity which specifically includes "departments" and "agencies," the actual termination of parental rights proceeding itself does not. *See* 42 U.S.C. § 12131(1)(c). The Petitioners have not claimed that DCYF prohibited them from participating in any activity, service, or program. Thus, the *Yeskey* case is not applicable to facts of the matter at hand. And, moreover, the Rhode Island Supreme Court's decision that the ADA does not apply directly to a termination of parental rights proceeding does not conflict with this Court's decision in *Yeskey*.

B. The Americans with Disabilities Act ("ADA") is Not Directly Applicable to Termination of Parental Rights Proceedings.

In order for the Americans with Disabilities Act to be violated one must be "excluded from participation" or be "denied the benefits of the services, programs, or activities of a public entity, . . . " *See* 42 U.S.C. § 12132. With respect to the actual termination of parental rights proceeding, the Petitioner/parents were not excluded from or denied the ability to fully participate in the termination proceeding. The Petitioners have not even argued that they were denied the ability to participate in the actual termination of parental rights court proceeding. The case of *Tennessee v. Lane*, illustrates what is defined as a violation of the

ADA. *See Tennessee v. Lane, et al.*, 541 U.S. 509 (2004). In said case, Mr. Lane was a paraplegic confined to a wheelchair who claimed that he had been denied access to the courthouse, because the courthouse was not wheelchair accessible nor did it have an elevator. *Id.* at 513. This Court concluded that Title II of the ADA was applicable to the matter since the petitioner had been denied his right of access to the courts. *Id.* at 533. This Court went on to provide a history of the type of situations that Title II of the ADA was intended to remedy.[5]

The type of harm the ADA was intended to remedy is not found in the matter at hand, as neither Irving, nor

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[5] "It is not difficult to perceive the harm that Title II is designed to address. Congress enacted Title II against a backdrop of pervasive unequal treatment in the administration of state services and programs, including systematic deprivations of fundamental rights. For example, "[a]s of 1979, most States . . . categorically disqualified 'idiots' from voting, without regard to individual capacity." n5 The majority of these laws remain on the books, n6 and have been the subject of legal challenge as recently as 2001. n7 Similarly, a number of States have prohibited and continue to prohibit persons with disabilities from engaging in activities such as marrying n8 and serving as jurors. n9 The historical experience that Title II reflects is also documented in this Court's cases, which have identified unconstitutional treatment of disabled **[*525]** persons by state agencies in a variety of settings, including unjustified commitment, *e.g., Jackson v. Indiana*, 406 U.S. 715, 32 L. Ed. 2d 435, 92 S. Ct. 1845 (1972); the abuse and neglect of persons committed to state mental health hospitals, *Youngberg v. Romeo*, 457 U.S. 307, 73 L. Ed. 2d 28, 102 S. Ct. 2452 (1982); n10 and irrational discrimination in zoning decisions, *Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 87 L. Ed. 2d 313, 105 S. Ct. 3249 (1985). The decisions of other courts, too, document a pattern of unequal treatment in the administration of a wide range of public services, programs, and activities, including the penal system, n11 public education, n12 and voting. n13 Notably, these decisions also demonstrate a pattern of unconstitutional treatment in the administration of justice. n14"

Dawn were denied the ability to participate in any service, program or activity provided by DCYF.

Most state courts are in agreement that the ADA simply does not apply directly to termination of parental rights proceedings. The high court of the State of Massachusetts considered this issue in the case of *In re Adoption of Gregory*, 747 N.E.2d 120 (MA 2001). The father in that case claimed that the trial judge erred in terminating his parental rights because the Department failed to accommodate his disabilities in its services. *Id.* at 123.

The father specifically argued the following:

> " . . . the judge erred in terminating his parental rights, under G. L. c. 210, § 3, because the department failed reasonably to accommodate his cognitive disorder and attention deficit hyperactivity disorder (ADHD) by providing services designed for these disabilities, in violation of Title II of the ADA, 42 U.S.C. § 12132, . . . " *In re Adoption of Gregory*, 747 N.E.2d, at 124.

The Supreme Judicial Court of Massachusetts concluded that the ADA does not apply to termination proceedings and reasoned as follows:

> "As discussed below, we conclude that: (1) proceedings to terminate parental rights under G.L. c. 210, § 3, do not qualify as "services, programs, or activities" under the ADA, and thus, the ADA may not be raised as a defense to such proceedings; and (2) the ADA, as well as Massachusetts antidiscrimination laws, regulations, and its Constitution require the Department to render services that accommodate the parents' special needs prior to G. L. c. 210, § 3, proceedings, which it did in this case.

. . .

> In our view, the parents' rights are secondary to the child's best interests and thus, the proper focus of termination proceedings is the welfare of the child. G. L. c. 210, § 3. *People ex rel. T.B.*, 12 P.3d 1221, 1223 (Colo. Ct. App. 2000). *See* Petition of the Dep't of Social Servs. to Dispense with *Consent to Adoption*, 391 Mass. 113, 118-119, 461 N.E.2d 186 (1984). Despite the parents' special needs or limited capabilities, "the child is entitled to at least a minimum level of parental care." *People ex rel. T.B., supra* at 1224." *In re Adoption of Gregory*, 747 N.E.2d, at 124.

The Massachusetts court went on to state that notwithstanding whether the ADA applied, "the department reasonably accommodated the father's disabilities. As the judge found, the department provided ample services, specifically tailored to meet the father's special needs and designed to improve his parenting skills." *In re Adoption of Gregory*, 747 N.E.2d, at 124.

Significantly, the court also stated that "a parent must raise a claim of inadequate services in a timely manner so that reasonable accommodations may be made." *Id.* at 127. Raising such a claim at the termination proceeding, when a child has already been in state foster care for several years, is not timely,[6] and that is exactly what the Petitioners have done in the within matter.

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[6] "Finally, we note that a parent must raise a claim of inadequate services in a timely manner so that reasonable accommodations may be made. If a parent believes that the department is not reasonably accommodating a disability, the parent should claim a violation of his rights under either the ADA or other antidiscrimination legislation,

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Numerous other state courts have also held that the ADA is not applicable in termination of parental rights proceedings. In the case of *In re Anthony B.*, 735 A.2d 893 (CT. 1999), the Appellate Court of Connecticut concluded that the ADA neither provides a defense to, nor creates special obligations in a termination proceeding. *Id.* at 899. The Connecticut Court further concluded that "a termination proceeding is not a 'service, program, or activity' under the ADA. *Id.*

The Court of Appeals in Louisiana has also addressed this issue. In the case of *State ex rel., B.K.F.*, 704 So.2d 314 (La. Ct. App. 1997), the Louisiana Court stated the following:

> "In this case, C.F. alleges that the Americans with Disabilities Act applies to this termination of parental rights proceeding. The trial court found that the Americans with Disabilities Act was *not* applicable to these proceedings, and even if it were to apply, OCS (Office of Children's Services) has made reasonable modifications for C.F. The trial court, therefore, *denied*

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either when the parenting plan is adopted, when he receives those services, or shortly thereafter. At that point, the court or the department may address the parent's claim. However, where, as here, a disabled parent fails to make a timely claim that the department is providing inadequate services for his needs, he may not raise noncompliance with the ADA or other antidiscrimination laws for the first time at a termination proceeding. Here, the father had two possible options to remedy his complaint of inadequate services. He could have pursued his claim that the service plan and other department services failed to address his disabilities through an administrative fair hearing or grievance process. See 110 Code Mass. Regs. §§ 6.07, 10.05, 10.06, 10.37, 10.39 (1998). n2 Alternatively, he could have commenced a separate action for discrimination under the ADA. He did neither." *See In re Adoption of Gregory*, 747 N.E.2d 120, 127.

> appellant's motion to dismiss for failure to comply with the ADA.
>
> . . .
>
> In this proceeding, appellant has alleged that OCS has failed to make appropriate modifications in its policy, practice or procedure to avoid discrimination against her on the basis of her disability. However, termination of parental rights proceedings are not "services, programs or activities" within the meaning of the ADA. Accordingly, we hold that the ADA may *not* be used as a *defense* in a *parental rights termination* case.
>
> While this appears to be a case of *first impression* in our jurisdiction, we note that *other courts* have *also concluded* that a parent may *not* raise violations of the ADA as a defense to termination of parental rights proceedings. *Stone v. Daviess County Div. Of Children & Family Services*, 656 N.E.2d 824 (Ind. Ct. App. 1995); *In re Torrance*, 187 Wis. 2d 10, 522 N.W.2d 243 App. 1994." *State ex rel., B.K.F.*, 704 So.2d 314, at 317.

The Supreme Court of the State of Vermont has also addressed the issue of whether the ADA applies to termination of parental rights proceedings. In the case of *In re B.S., Juvenile*, 693 A.2d 716 (Vt. 1997), the court said:

> "The mother's second claim of error is that the court improperly terminated her parental rights without addressing her claims under Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131-12134. She relies on the fact that she is mentally retarded and mental retardation is a disability within the meaning of the

> ADA. See 42 U.S.C. § 12102(2) (defining "disability"); 28 C.F.R. § 35.104(1)(ii) (mental retardation is a disability); *Howard v. Department of Social Welfare*, 163 Vt. 109, 115 n.1, 655 A.2d 1102, 1106 n.1 (1994) (learning disability is impairment under ADA). She argues that, with help, she has the capacity to care for her child and is therefore a qualified person eligible for accommodation under the ADA. See 42 U.S.C. § 12131(2) (defining "qualified individual with a disability"). She claims that SRS has failed to accommodate her disability and, as a result, has discriminated against her in the provision of the services needed to parent her child." *In re B.S., Juvenile*, 693 A.2d 716, at 719.

The Vermont Court went on to conclude that the ADA did not apply to TPR proceedings. *Id.* at 720. "TPR proceedings are not 'services, programs or activities' within the meaning of Title II of the ADA, 42 U.S.C. § 12132." "Thus, the anti-discrimination requirement does not directly apply to TPR proceedings." *Id.* at 720. Other states which have adopted this reasoning include Indiana, Wisconsin, and Michigan. *See Stone v. Daviess County Div. of Children & Family Services,* 656 N.E.2d 824 (Ind. Ct. App. 1995); *In re Torrance P.,* 522 N.W.2d 243 (Wis. Ct. App. 1994); *In re Terry*, 610 N.W.2d 563 (Mich. App. 2000).

Similarly, the Rhode Island DCYF proffers that the decision of the Rhode Island Supreme Court that, the ADA does not apply to TPR proceedings, is consistent with the decisions of other high state courts and does not conflict with any decision of this Court.

C. The Americans with Disabilities Act Does Not Provide a Defense to Termination of Parental Rights Proceedings.

It is undisputed that the state courts have taken differing positions regarding whether and how Title II of the ADA applies to termination of parental rights proceedings. Clearly, however, all parties agree that we are unable to find a decision holding that the state violated the ADA in a termination of parental rights proceeding. *See Petitioner's Brief* 13. What this reflects is that notwithstanding whether a lower court holds that the ADA applies to termination proceedings, the state agency has a separate and distinct duty to provide reasonable efforts to reunify a parent and child in certain situations.[7] The states that have addressed this issue decline to allow the ADA to be used as a defense in termination proceedings because the reasonableness of the services offered to parents is specifically addressed in the state reunification statutes. *See* R.I.G.L. § 15-7-7(b).[8]

---

[7] In cases where a termination proceeding is based upon a parent abandoning an infant child or upon a parent exhibiting cruel and abusive behavior toward a child, the state is NOT obligated to make any efforts to reunify that child with the abusive parent. *See* R.IG.L. § 15-7-7(a)(2)(ii) and § 15-7-7(a)(4).

[8] R.I.G.L. § 15-7-7(b) "In the event that the petition is filed pursuant to subdivisions (a)(1), (a)(2)(i), (a)(2)(iii), or (a)(2)(vii) of this section, the court shall find as a fact that, prior to the granting of the petition, such parental conduct or conditions must have occurred or existed notwithstanding the *reasonable efforts which shall be made by the agency prior to the filing of the petition* to encourage and strengthen the parental relationship so that the child can safely return to the family. In the event that a petition is filed pursuant to subdivisions (a)(2)(ii), (a)(2)(iv), (a)(2)(v), (a)(2)(vi) or (a)(4) of this section, the department has *no obligation to engage in reasonable efforts* to preserve and reunify a family." (Emphasis added).

In the case of *In re Terry*, the state court of Michigan held that a parent "may not raise a violation of the ADA as a defense to termination proceedings. *See In re Terry*, 610 N.W.2d 563 (Mich. App. 2000). The Michigan court went on to state:

> "We agree that termination of parental rights proceedings do not constitute "services, programs or activities" within the meaning of 42 USC 12132. Accordingly, we hold that a parent may not raise violations of the ADA as a defense to termination of parental rights proceedings. Nevertheless, the ADA does require a public agency, such as the Family Independence Agency (FIA), to make reasonable accommodations for those individuals with disabilities so that all persons may receive the benefits of public programs and services. Thus, the reunification services and programs provided by the FIA must comply with the ADA. n4 However, in the context of the present case, we discern no conflict between the ADA and Michigan's Juvenile Code. Under MCL 712A.18f(4); MSA 27.3178 (598.18f)(4), before entering an order of disposition, the court must determine whether the FIA has made "reasonable efforts" to rectify the conditions that led to its involvement in the case. Thus, the state legislative requirement that the FIA make reasonable efforts to reunite a family is consistent with the ADA's directive that disabilities be reasonably accommodated. In other words, if the FIA fails to take into account the parents' limitations or disabilities and make any reasonable accommodations, then it cannot be found that reasonable efforts were made to reunite the family. n4 Services are not mandated in all situations, but MCL 712A.18f(1)(b); MSA 27.3178 (598.18f)(1)(b) requires petitioner to

> justify a decision not to provide services to a particular family." *Id.* at 570.

In re Terry provides an excellent clarification of how the ADA does not provide a defense to the court proceeding itself, but is consistent with the state legislative requirements that the agency make reasonable efforts to reunify the parent and child before the family court can terminate parental rights. *See In re Terry*, 610 N.W.2d 563, 570 (Mich. App. 2000).

The Michigan court then joined in the reasoning of the Massachusetts high court in the timing issue of raising ADA violations.

> "Any claim that the FIA is violating the ADA must be raised in a timely manner, however, so that any reasonable accommodations can be made. Accordingly, if a parent believes that the FIA is unreasonably refusing to accommodate a disability, the parent should claim a violation of her rights under the ADA, either when a service plan is adopted or soon afterward. The court may then address the parent's claim under the ADA. Where a disabled person fails to make a timely claim that the services provided are inadequate to her particular needs, she may not argue that petitioner failed to comply with the ADA at a dispositional hearing regarding whether to terminate her parental rights. In such a case, her sole remedy is to commence a separate action for discrimination under the ADA." *In re Terry*, 610 N.W.2d 563, at 570; *see also In re Adoption of Gregory*, 747 N.E.2d, at 124.

The Rhode Island court followed in the reasoning of the above-mentioned courts when it determined that the ADA does not directly apply to termination proceedings

and even if it did, the Petitioners were offered reasonable services to reunify with their child.

D. The Few Courts That Have Stated That a Termination of Parental Rights Proceedings is an Activity Within the Meaning of the ADA Have Either Been Overturned or Have Found No Violation of the Act.

In the case of *In the Interest of Jane Doe*, the State of Hawaii did state that a TPR proceeding is a "program or activity" of the family court, falling within the meaning of the ADA, however ultimately concluded that "the ADA does not allow parents to defend a TPR proceeding on the basis that they were not provided with appropriate services to accommodate their disabilities." *In the Interest of Jane Doe,* 58 P.3d 78, 88-89 (Haw. App. 2002). This decision, however, that a TPR proceeding is a "program or activity" of the family court, falling within the meaning of the ADA, was specifically overruled in the case of *In the Interest of Doe*, 60 P.3d 285 (Haw. 2002). In the *Doe* case, the Hawaii court stated the following:

> "In *In re Interest of Jane Doe*, 58 P.3d 78, (Haw. App. 2002), the Intermediate Court of Appeals (ICA) held that a termination of parental rights proceeding (termination proceeding) is a "program" or "activity" covered under the ADA. Applying the ADA, the ICA addressed the merits of the parents' claim. As we hold here, such claims cannot be raised in a termination proceeding as a defense. . . . The merits are outside the purview of the family court in a termination proceeding, and thus In re Jane Doe, except for its affirmance of the family court's orders, must be overruled." *Id.* at 292.

In *Doe*, the court held "that a parent's allegations of a violation of the Americans with Disability Act (ADA), 42

U.S.C. §§ 12131 through 12134, do not raise a defense in a proceeding to terminate parental rights under Hawai'i Revised Statute (HRS) § 587-73 (1993). However, Department of Human Services-Appellee (DHS) should provide "every reasonable opportunity" to a parent to succeed in reuniting a family, . . . , particularly in establishing the steps necessary to reunite the family in the form of a service plan." *Id.* at 287.

Like the parents in the *Doe* case, the Petitioners here should also have been provided with every "reasonable opportunity" or "reasonable effort" to reunify with Kayla, and they were. Petitioners do not claim that they were excluded from or denied participation in any particular activity or service. As such, their claim of an ADA violation may not be used as a defense in a termination of parental rights proceeding. The Petitioners do claim, however, that the services they did receive were not sufficiently tailored to their disabilities. *See Petitioner's Brief* 8. This is a separate and distinct factual question that must be decided on a case-by-case basis and does not in and of itself constitute a violation of the ADA.

A termination of parental rights proceeding is a very emotional and factually driven case. Whether a parent is addicted to illegal substances, is cognitively limited, or is abusive to their child; they must still be offered *reasonable* services to correct the situation which led to the child's removal from the home. If the state court determines that the services were not reasonable, the termination of parental rights petition must be denied. Conversely, if the court determines the services were reasonable and that the child's best interests will be served, the petition must be granted. Thus, to argue whether or not the ADA applies to the actual court proceeding is a red herring when one considers the analysis performed by the Family Courts.

Rhode Island General Law mandates that "the court shall find as a fact that, prior to the granting of the petition, such parental conduct or conditions must have occurred or existed notwithstanding the **reasonable efforts** which shall be made by the agency prior to the filing of the petition to encourage and strengthen the parental relationship so that the child can safely return to the family." *See* R.I.G.L. § 15-7-7(b) (emphasis added). Thus, pursuant to state law, the Rhode Island Family Court is required to make a finding that the DCYF made reasonable efforts to strengthen the parental relationship so that the child could be safely reunified.

The Rhode Island Family Court consistently considers the reasonableness of the services offered to reunify families, especially in families where the parents are cognitively limited. *See In re Kayla F. and Brittany R.*, 692 A.2d 698 (R.I. 1997) (Court considered the reasonable efforts DCYF made to assist mother who had limited cognitive abilities.); *In re Raymond C., et al.*, 864 A.2d 629 (R.I. 2005) (Record discloses mother's mental illness was the primary barrier to reunification; mother received reasonable services through mental health counseling that were numerous and comprehensive.); *In re Jennifer G.*, 767 A.2d 682 (R.I. 2001) (Court found that DCYF offered the mother reasonable services, including psychotherapy, a psychiatric evaluation, and the Spurwink program, where mother had mental health disorder.)

In the hand, there are times when the Rhode Island court determines that DCYF did not make reasonable efforts to address a parent's cognitive or mental health deficiencies. *See In re Christopher B.*, 823 A.2d 301 (R.I. 2003). In the *Christopher B.* case, the Rhode Island Court held that DCYF did not make reasonable efforts to address the mother's limited cognitive abilities and improve her

parenting skills. The mother in that case, like the Petitioners, was diagnosed as mildly mentally retarded. Though her evaluators conceded that specialized services may not be sufficient to allow for reunification to occur, they still recommended that the services be received to more fully determine her parenting abilities. The Rhode Island DCYF, however, did not make the proper referrals for services. The court stated:

> "Significantly, DCYF failed to abide by these recommendations. Thus, it made no additional referrals for Mary Ann other than for marriage counseling; it offered her no services aimed at specialized parenting education over the next year – other than her continued participation in the supervised visitation program at the Children's Museum. n3 In addition, although advised of Mary Ann's cognitive impairment and that its presence was a barrier to reunification, DCYF took no steps to provide Mary Ann with any form of specialized services [*7] aimed at addressing this problem." *See In re Christopher B.*, 823 A.2d at 304 (R.I. 2001).

Unlike the parent in the *Christopher B.* case, the Petitioners were offered specialized parenting services throughout the year 2000 from the Spurwink program. Dawn had also received Spurwink services from 1998 to the end of 1999 with her first child Michelle. Beginning in early 2001, Early Intervention Services were put in place to work with the parents and the child. DCYF also offered services from the VNA Healthy Tomorrows Program and Project Early Start. These programs were specifically put in place to assist the parents in dealing with Kayla's medical issues and developmental issues. *TR.* VI – 7/25/02 p. 7. DCYF also made a referral to the Partners in Permanency Program at Children's Friends and Services, which

did provide services. *TR.* VI – 7/25/02 p. 8. DCYF further provided the Appellants with a parent/child evaluation at the Providence Center, psychological evaluations, and psychiatric evaluations. The Appellant/mother was also provided counseling through the Sexual Assault and Trauma Center so that mother could receive counseling for her own issues of sexual abuse victimization as a child. *TR.* VI – 7/25/02 p. 8. Additionally, DCYF referred the parents to St. Mary's Home for Children for specialized parent education. The Petitioner father, however, refused to participate in this parent education program. *TR.* I – 5/24/02 pp. 72, 74.

So, unlike in the *Christopher B.* case, the Petitioners were offered services specifically tailored to their special needs and as such the Americans with Disabilities Act was not violated, even if it did apply to termination of parental rights proceedings.

E. The Rhode Island State Court Did Not Violate the ADA by Failing to Consider Permitting *Sandra N.* to Adopt Kayla.

Lastly, the Petitioners argue that "the state court failed to consider whether permitting Sandra N. to adopt Kayla would be a proper "reasonable modification." *See Petitioner's Brief* 8. This is incorrect for several reasons. First, this is entirely a factual issue since the Rhode Island Family did consider whether to allow Sandra N. to adopt Kayla. The Rhode Island Family Court took testimony specifically on the adoption petition filed by Sandra N. The Family Court gave significant weight to the fact that Sandra was asked to care for Kayla shortly after her birth in April of 2000, yet Sandra was unable to care for her. It was not until two years later that Sandra indicated she could care for Kayla. By that point Kayla had become

very attached to her foster family and her sibling that she had lived with for those two years.

Not only did the Rhode Island state court consider Sandra N.'s adoption petition but it also considered the best interests of the child in denying said petition.

CONCLUSION

This case is a most difficult case in that the unfitness of the parents comes from their inability to learn how to safely parent Kayla largely as a result of their cognitive limitations and not as a result of their intentional abuse or neglect of this child. However, we must consider the effect that prolonging this litigation will have upon Kayla. *See Castorr, et al. v. Brundage, et al.*, 459 U.S. 928, at 930 (1982). ("the importance of finality is compelling." " . . . prolongation of this litigation might have a serious adverse effect on the emotional and physical health of the child.").

The best interests of Kayla mandate that she be freed for adoption and allowed to be adopted by the family that has cared for her for so long.

Based on the foregoing, the Petition for Writ of Certiorari should be denied.

Respectfully Submitted,

DEPARTMENT OF CHILDREN,
YOUTH AND FAMILIES

KAREN A. CLARK, ESQ., #5419
101 Friendship Street, 4th floor
Providence, RI 02903
(401) 528-3550
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No. 06-603

In The

Supreme Court of the United States

IRVING N., DAWN N., AND SANDRA N.,

Petitioners,

v.

RHODE ISLAND DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES

On Petition For A Writ Of Certiorari To The Supreme Court Of Rhode Island

APPENDIX TO THE BRIEF IN OPPOSITION

APPENDIX

TABLE OF CONTENTS

		Page
APPENDIX A	Spurwink records	App. 1
APPENDIX B	Psychological evaluations, Dr. Steven Hirsh	App. 8
APPENDIX C	Psychiatric evaluations, Dr. Savitsky	App. 22
APPENDIX D	Rhode Island General Laws	App. 31
APPENDIX E	JUDGMENT of the Rhode Island Family Court	App. 37
APPENDIX F	ORDER, Bourcier, J. 5/23/02, Rhode Island Supreme Court	App. 42

APPENDIX A

Spurwink [LOGO]
Administrative Office
One Spurwink Place
Cranston, RI 02910-2012
Phone 401-781-4380
Fax 401-781-4396
Community Support Program
One Spurwink Place
Cranston, RI 02910-2012
Phone 401-781-4380
Fax 401-467-3261

FAMILY SUPPORT DISCHARGE SUMMARY

FAMILY NAME: Dawn and Irving Nardolillo
FSW: Elsbeth Horton
FUNDING: 005
DCYF WORKER: Gail Okai
DATE: January 10, 2001

Reason for Referral: This case was opened to DCYF on 2/18/98, following the birth of Michelle Major. Dawn Major, the child's mother was found to be emotionally unstable, living in several places throughout her pregnancy, at one point being homeless, and was suspected of starting fires. A 72-hour hold was placed on Michelle. It was then learned that Dawn was living with her mother, who has an extensive history with DCYF, including allegations of sexual molestation as to Dawn. Dawn gave birth to her second child, Kayla Nardolillo on April 13, 2000. Visits now co Irving Nardolillo, Kayla's father also participates in these visits. On September 28, 2000 Michelle was adopted by her foster family. Spurwink services began in November of 1998, and continued until October 25, 1999. Services were put into place again in December 1999, with

a change of workers in January of 2000, and continued until December 2001. Services were limited to supervised visits at DCYF for two hours once a week. This report contains data from 11/14/00 to 12/29/00, as prior data has been included in previous reports to DCYF.

Goal 1: Exposing Kayla to language.

This worker continually models this concept for Dawn and Irving. Dawn continues to struggle with understanding Kayla at her developmental level. For example, on December 8th, Dawn was struggling to try a Christmas outfit on Kayla. She was having a hard time putting Kayla's arms into it. She said to Kayla, "come on." Worker had to explain to Dawn that Kayla does not yet have a concept of how to dress. Later that same visit, Dawn was attempting to change Kayla's diaper. Dawn said to her, "come Kayla, lift up, and "well, excuse me! I have to change your diaper!!"

Goal 2: Interacting with Kayla.

Dawn continues to need prompting in this area. Worker continues to model proper interaction. Dawn also needs prompting to spend quality time with her daughter, as she only sees her for two hours a week. Although the time that Dawn will hold and interact with her child has increased lately, she will do so while commenting on "what the judge said." For example on 12/8, Dawn was sitting on the floor with Kayla, playing. She began to complain about getting old. Irving told her to sit in the chair. She replied, "no! You heard what the judge said! I want her home!"

Dawn and Irving have both made several comments about "how much Kayla likes Elsbeth." Neither Dawn nor Irving

seems to be able to grasp the concept of continued interaction with their child. Although they do interact with her some during a visit, they both need prompts to continue this task, or to change the way they go about it. For example, on November 17th, this worker began to talk with Kayla, who in turn, smiled. Irving said, "I don't know why she likes Elsbeth so much!" Worker explained that it was due to the fact that I was being silly, and babies love that. On December 8th, Dawn handed the baby to me after Kayla began to fuss. Worker has continually talked with Dawn and Irving about distracting Kayla during diaper changes. Dawn will now tell Irving to get a rattle to stop her from crying.

Goal Three: To provide basic child care skills.

Both Dawn and Irving are capable of changing Kayla's diaper. This task is completed at least twice during every visit by Dawn or Irving. This worker had in the past expressed some concern that Kayla would never take a full bottle while at a visit. It has since been found that Kayla had a birth defect that caused fluid to go into her ear canal each time she swallowed, which caused her great pain. She also experienced pain while laying flat, which explained her lack of sleep. She was operated on in December to correct this problem.

When Dawn and Irving where told of their daughters problem, Dawn used this as an reason to not change her diaper. On 12/8, she stated that Kayla needed a diaper change, but did not want to lay her flat and cause her pain. Worker had to tell her to be quick.

This worker has also had to intervene when Dawn and Irving where attempting to get her dressed, and other clothing issues. For example, in November, Dawn bought Kayla a snow suit, which was for a very small infant. The size on the tag said 12 months. Worker explained to Dawn that while it may fit Kayla now, it would not continue to fit her long. Dawn could not understand why. Worker had Dawn dress the baby in it to explain it better. Dawn then took the snow suit back, and exchanged it for exactly the same one, only in a different color, same size.

On 12/8, Dawn brought Kayla's Christmas dress to try on her. While she was changing Kayla's diaper, worker suggested that they try the dress on, as she was already half undressed. Both Dawn and Irving took part in this venture. Neither could get the dress on her all the way. They where successful getting it over her head, but could not button it. They then attempted to put her other outfit back on her, but could not remember which way the outfit went or how to snap it up. Worker finally intervened after about five minutes of them arguing how to snap it up. Since Kayla's surgery, she has been doing much better sleeping and eating. However, Dawn still finds it difficult to understand and complete the task of feeding her. On 12/29, Dawn was told the baby needed to eat at 10:30. However, Kayla was not feeling well, and slept throughout most of the visit. Dawn kept asking what she should do about feeding her, and both Dawn and Irving became nervous when 10:30 drew near. Worker told her to wait and see if she was still asleep at 10:30. At about 10:15, Dawn stated, "I don't know what do about her eating. I should have asked Lisa (who was covering for Gail) what I should do if she was asleep. I hate to wake her." Worker told Dawn that this was a decision that she had to make

as Kayla's mother. When 10:30 came, Dawn wanted to feed her. Irving told her to leave her alone, because if she woke up, she would be cranky. Dawn said, "I have to feed her. If I was home with her, I would feed her. I am not going to let her starve. I need to keep her on schedule.' She then woke the baby up, and she drank the whole bottle and fell back to sleep. Although, in this worker's opinion neither decision Dawn made would have been wrong, it is concerning the lack of understanding Dawn showed in this decision.

Goal 4: Providing Kayla with Safety.

This goal still seems to be a major issue with the Nardolillo family. Although Dawn attempted to not have a relationship with her mother, her mother still is a major part of her fife. Rose Major, according to Dawn, fell ill in December and now needs constant care for her basic needs. Dawn has stated to this worker that she has "a big decision to make" regarding her mother's care, this being whether to let her return home, or be placed in a nursing home.

Dawn still talks of the people who play an influential role in her life, and the unsafe situations this has caused. Dawn, during one visit talked of her mother's friend stealing her pain killers, and giving her mom the wrong medication, which according to Dawn has caused her mother's illness. Dawn still seems to lack the understanding of how this could affect her daughter's life.

Dawn continues to spend a lot of time trying to manipulate the rules of her daughter's visit. Dawn and Irving have both been given permission to take one picture each during visits, bringing the total to 2 pictures. On 12/7/00, this worker received a message from Dawn stating "I

talked to Brenda and she said that we could take six pictures today. Two for the visit when Kayla was in New York, two for last week because of court, and two for today. I will take seven, to give you an updated one of Kayla." Worker checked with her supervisor, Beth Ingram, who checked with Brenda Almeida. Brenda stated that she never gave Dawn permission to take that many pictures. When FSW confronted Dawn on this, Dawn tried to argue with Tom Roberts (who was covering for Gail), and myself, "but she said, . . . I asked Gail. . . . ". Tom told Dawn, "Dawn you know the routine! One picture." This situation shows again how Dawn will take a situation and twist it to meet her own needs.

REASON FOR DISCHARGE: At the last court session, held in November, home visits where ordered for this family. Given the safety issues and concerns these visits would provide, Spurwink will not carry out these visits. As a result, the last visit was on December 29, 2000.

RECOMMENDATIONS: Although both Dawn and Irving have the ability to change their daughter's diaper and provide minimal stimulation and basic care, this agency has serious concerns for the well being of Kayla. Dawn has not, in the years that service has been provided shown the ability to put her children's needs above that of her own. Although Dawn may love her child, she has not proven to be able to provide a safe, nurturing and stable environment in which Kayla needs to thrive. All aspects of this case should be carefully examined to determine how to best meet Kayla's needs.

/s/ Elsbeth A. Horton
Elsbeth A. Horton
Family Support Worker

/s/ Bethany Ingram
Bethany Ingram, LSCW
Social Work Supervisor

CC: Brenda Almeida
Nancy Harrington

APPENDIX B

STEVEN S. HIRSCH, PH.D., A.B.P.P.
1 RICHMOND SQUARE
SUITE 104C
PROVIDENCE, RI 02906

PSYCHOLOGICAL EVALUATION

PATIENT'S NAME: Nardolillo, Dawn
TESTS TESTED: 9-28, 10-10-01
PATIENT'S DATE OF BIRTH: 9-15-72
CHRONOLOGICAL AGE: 29-0

REASON FOR THE REFERRAL: Mrs. Nardolillo, age 29-0, was referred for a Psychological Evaluation of her cognitive and emotional functioning due to a history of physical, emotional and sexual abuse as a child, cognitive and academic delays and deficits (mild mental retardation), significant psychosocial immaturity, a history of fire setting and a characterological disorder (Personality Disorder). This evaluation was requested by D.C.Y.F. and the Family Court of Rhode Island.

BACKGROUND INFORMATION: Mrs. Nardolillo, age 29-0, was born in Providence, Rhode Island. It is reported that she has developed very toxic and chaotic relationships with her family. She reports that her father died in 2001. Mrs. Nardolillo especially has a very toxic relationship with her mother. It is reported that Mrs. Nardolillo was not only sexually molested by her father, but also by her mother. Mrs. Nardolillo's mother experienced a stroke in December of 2000 and is currently in the process of being placed in a nursing home. Mrs. Nardolillo is one of several siblings of a blended family system. Social Service records indicate that several of her siblings were also sexually molested. It is reported that she was sexually molested as

a young child (by her father and mother). Despite numerous indicated accounts of physical, emotional and sexual abuse, Mrs. Nardolillo vehemently denies having ever been abused (her high level of denial is a major problem for treatment – see recommendation section), Mrs. Nardolillo reports that she attended public schools and completed the special educational sequence at the Cranston/East High School (1991). She never repeated any grades, but she did receive special educational assistance throughout her academic career. Mrs. Nardolillo reports that she was married in 1992. She states that she had the marriage annulled sometime in 1992 when she found out that her husband was abusive as well as being bisexual. She was married for the second time in 1999 (Irwin [sic] Nardolillo). Mrs. Nardolillo has two children (one child from each of her marriages) Michelle (date of birth 2-10-98). Michelle was placed at birth with a pre-adoptive family and has since been adopted (open adoption). Mr. and Mrs. Nardolillo have a child, Kayla (date of birth 4-13-00). This child was also taken from them at birth and placed in a foster home (the same family that has adopted Michelle). Michelle [sic] denies having a police record. She reports that she currently smokes several cigarettes per day. She denies abusing alcohol or drugs. She states that she is scheduled to return to Family Court on November 16, 2001. Mrs. Nardolillo currently works at a local fast food restaurant (McDonald's). She has never received any type of inpatient psychiatric treatment. She is not currently involved in any type of outpatient counseling (she reports "I'm all done"). A variety of psychological/social services have been offered and provided to Mrs. Nardolillo over the past several years (regarding her). Mrs. Nardolillo was involved, as a child, with D.C.Y.F. (ages 7 through 18). She was involved due to very dysfunctional,

chaotic and toxic family relationships, a history of physical, emotional and sexual abuse as well as fire setting. Medically, Mrs. Nardolillo has been diagnosed with asthma.

MEDICATION STATUS: Mrs. Nardolillo currently takes a variety of medications for asthma as well as seasonal allergies. (See medical reports for specifics).

TESTS ADMINISTERED:

Psychodiagnostic Interview Mental Status Exam
Lateral Dominance Test Aphasia Screening Test
Bender Gestalt Test of Visual Perception
Wide Range Achievement Test
Wechsler Adult Intelligence Scale-3rd Edition
Incomplete Sentence Blank Test
Rorschach Inkblot Test

TEST RESULTS:

BEHAVIORAL OBSERVATION/MENTAL STATUS: Mrs. Nardolillo is a 29-0 year old Caucasian woman with reddish/dark blonde hair and brown eyes. She stands 5 ft. 4 inches tall and weighs in excess of 150 lbs. Her hygiene skills were found to be good. Her attire was casual. She was alert, cooperative and oriented in three spheres (person, place and time). She did not appear to be in any physical discomfort. She is a right-handed individual whose coordination, posture and gait were found to be grossly intact. Her graphomotor abilities were found to be within the borderline range (fine motor skills). Her speech was clear and her expressive vocabulary skills were found to be at the 2nd percentile for adults her age. Her memory for past, recent and personal events were found to be quite

evasive. There was well documented information (i.e. indicated cases of physical, sexual and emotional abuse as well as a history of fire setting). Mrs. Nardolillo vehemently denies that any of these events occurred. Her reality testing is functional. Her social, judgment and reasoning skills on a day to day basis are negatively impacted by her limited cognitive endowment. Her thinking was found to be rather concrete. Fortunately, there was no evidence of any loose associations, perceptual distortions or delusional thinking. Her cognitive skills were assessed and found to be within the mildly mentally retarded ranges. This finding is consistent with previous assessments. Her affect was appropriate. She was not anxious. Her frustration tolerance was found to be somewhat variable. Mrs. Nardolillo is a very psychosocially immature adult. She had some difficulty shifting cognitive sets (consistent with her mild mental retardation). Overall, Mrs. Nardolillo appeared to be able to tolerate the evaluation process.

NEUROPSYCHOLOGICAL FUNCTIONING:
Mrs. Nardolillo's neuropsychological history is positive for cognitive and academic delays and deficits requiring special educational assistance throughout her academic career.

Mrs. Nardolillo's responses to the Wechsler Adult Intelligence Scale-3rd Edition yielded a reliable and valid cognitive profile. Her overall cognitive skills were found to be within the mildly mentally retarded ranges. This finding is consistent with previous assessments and her cognitive/academic histories. Listed below is a summary of her subtest performances on the WAIS-III:

Vocabulary	4
Similarities	5
Arithmetic	3
Digit Span	6
Information	5
Comprehension	7
Picture Completion	4
Digit Symbol	6
Block Design	3
Matrix Reasoning	3
Picture Arrangement	4

Verbal Scaled Score I.Q.	70
Performance Scaled Score I.Q.	63
Full Scaled Score I.Q.	64

(Subtests on the WAIS-III range from a low of 1 to a high of 19. An average subtest score on the WAIS-III is equal 10).

Mrs. Nardolillo is a right-handed individual. No tremors were noted. Her coordination, posture and gait were found to be functional. Her responses to the Aphasia Screening Test reflected academic delays and deficits. Her graphomotor abilities on the Bender Gestalt Test of Visual Perception were found to be within the borderline range. Her current Reading Recognition Skills were found to be at a beginning 5th grade level. Her Math Skills were found to be at the 1st percentile for adults her age.

SOCIAL/EMOTIONAL FUNCTIONING: Mrs. Nardolillo is a 29-0 year old Caucasian woman whose history is documented and positive for physical, emotional and sexual abuse as a young child. It is reported that she was sexually abused by both her mother and father. Mrs. Nardolillo's history is also positive for significant impulsive acting out behaviors and fire setting. She is a very

psychosocially immature person, who vehemently denies her ever having been molested and having ever set any fires. Mrs. Nardolillo has been described as a "liar." She is a very self-centered person, who frequently manipulates the truth for her own benefit. Mrs. Nardolillo's early history has significantly and negatively impacted her ability to initiate, establish and maintain adaptive and trusting interpersonal relationships. She is a very immature woman whose psychological makeup indicates that she would have difficulty emotionally bonding to a young child. She is an individual who tends to put "her needs" first. She frequently becomes very jealous of her husband as well as her child.

Mrs. Nardolillo did not describe any signs or symptoms of a Post Traumatic Stress Disorder.

Mrs. Nardolillo's history is negative for polysubstance abuse.

Mrs. Nardolillo's reports that she does not have any difficulty sleeping. Her appetite is fine. She is not experiencing any suicidal or homicidal ideation.

Mrs. Nardolillo's behavior/interpersonal problems can be traced back many years. Her behavior/interpersonal functioning reflect the presence of a personality disorder with narcissistic and borderline personality characteristics.

Mrs. Nardolillo's responses to projective tasks reflected her grossly intact reality testing (i.e. she is capable of perceiving the world in generally conventional ways). Her responses also reflected her significant psychosocial immaturity, impulsivity, low frustration tolerance and difficulty coping with emotionally charged situations. She

is an individual whose defenses are quite primitive and brittle (i.e. denial).

DIAGNOSIS:

Axis I	V71.09	No Diagnosis
Axis II	317.0	Mild Mental Retardation (with functional ADL skills)
	301.9	Personality Disorder with Narcissistic, Borderline, and Immature Features
Axis III		Reported history of asthma Reported history of seasonal allergies

RECOMMENDATIONS: 1. Dawn Nardolillo, age 29-0, is the mother of a developmentally delayed 18-month-old youngster. Kayla was born on April 13, 2000. She was placed following her birth in a foster home due to Mrs. Nardolillo's multiple emotional, interpersonal and cognitive problems. Mrs. Nardolillo's is an extremely immature and self-centered woman whose capacity for bonding with the young child (given her personality profile) is extremely limited. Mrs. Nardolillo's denial of her own chaotic and abusive early childhood experiences and very enmeshed and toxic relationship with her own mother continue to significantly interfere with her ability to initiate, establish and maintain adaptive and trusting interpersonal relationships. Mrs. Nardolillo is a 29-year-old who has difficulty adequately taking care of herself. Kayla Nardolillo, age 18 months, deserves to grow and develop in a healthy family system that will provide her with emotional stability and permanency. Given Mrs. Nardolillo's psychosocial difficulties, it is recommended to the Family Court that permanency for Kayla be initiated (i.e. termination of

parental rights so that Kayla can be adopted). Mrs. Nardolillo has received a variety of psychological/social services over the years (dating back to her early childhood) with very minimal impact. Future psychological/social services are not recommended.

SJH/dq

Steven J. Hirsch, Ph.D., A.B.P.P.
Clinical Psychologist
Diplomats in Clinical Psychology
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STEVEN J. HIRSCH, PH.D., A.B.P.P.
1 RICHMOND SQUARE
SUITE 104C
PROVIDENCE, RI 02906

PSYCHOLOGICAL EVALUATION

PATIENT'S NAME: Nardolillo, Irving
DATES TESTED: 10-10 & 10-28-01
PATIENT'S DATE OF BIRTH: 4-28-56
CHRONOLOGICAL AGE: 45-5

REASON FOR THE REFERRAL: Irving Nardolillo, age 45-5, was referred for a Psychological Evaluation of his cognitive and emotional functioning. This evaluation was requested by the Family Court of Rhode Island and D.C.Y.F. to assist in placement decisions regarding Mr. Nardolillo's 18-month-old daughter (Kayla).

BACKGROUND INFORMATION: Mr. Nardolillo was born in Providence, Rhode Island. His parents were divorced. He reports that his father is deceased. Mr. Nardolillo reports that he was raised by his mother. He is one of 13 siblings (7 brothers and 5 sisters). He reports that he attended public schools and dropped out of school when he was 16 years old. He received special educational assistance throughout his academic career. Mr. Nardolillo was never in the military. He reports that he has been married three times. His first marriage lasted approximately 9 months (sometime in the 1980's and ended in divorce). His second marriage began sometime in 1995 and ended several months later (the divorce occurred sometime in 1996). His third marriage began in June of 1999. Mr. Nardolillo has an 18 month old daughter, who is currently in a foster home. He also had a 3-year-old stepdaughter, who was allowed to be adopted (see D.C.Y.F. reports for

specifics). Mr. Nardolillo currently works sporadically as a janitor at the Civic Center in Providence, Rhode Island. He has been receiving social security benefits since the early 1970's. He has never received any type of inpatient psychiatric treatment. When questioned as to whether or not he ever received outpatient counseling, he stated "it wasn't court ordered." Mr. Nardolillo does not smoke cigarettes. His history is reportediy negative for alcohol or drug abuse. He is not currently being treated for any physiological disorders.

MEDICATION STATUS: Mr. Nardolillo is not currently taking any prescribed medications.

TESTS ADMINISTERED:

Psychodiagnostic Interview
Mental Status Exam
Lateral Dominance Test
Aphasia Screening Test
Bender Gestalt Test of Visual Perception
Wide Range Achievement Test
Wechsler Adult Intelligence Scale-3rd Edition
Incomplete Sentence Blank Test
Rorschach Inkblot Test

TEST RESULTS:

BEHAVIORAL OBSERVATION/MENTAL STATUS: Mr. Nardolillo is a 45-5 year old Caucasian male with salt and peppered colored hair and blue eyes. He stands 5 ft. 9 inches tall and weighs 150 lbs. His hygiene skills were found to be good. His attire was casual. He was alert, cooperative and oriented in three spheres (person, place and time). He is a right-handed individual, whose coordination, posture and gait were found to be grossly intact. His speech was clear and his expressive vocabulary skills

were found to be at the 1st percentile for adults his age. His memory for past, recent and personal events were found to be functional. His fund of general information was found to be at the 1st percentile for adults his age. His attention span was found to be at the 5th percentile for adults his age. Mr. Nardolillo's reality testing was found to be grossly intact. There was no evidence of any loose associations, perceptual distortions or delusional thinking. His overall thinking was found to be somewhat concrete. His cognitive skills were assessed and found to be within the mildly mentally retarded ranges. His affect was appropriate. He was not anxious. His frustration tolerance was found to be good. Overall, Mr. Nardolillo was able to tolerate the testing session.

NEUROPSYCHOLOGICAL FUNCTIONING: Mr. Nardolillo's neuropsychological history is positive for cognitive and academic delays and deficits requiring special educational assistance throughout his academic career. His cognitive skills have been assessed in the past and found to be within the mildly mentally retarded ranges.

Mr. Nardolillo's responses to the Wechsler Adult Intelligence Scale-3rd Edition yielded a reliable and valid cognitive profile. His overall cognitive skills were assessed and found to be within the mildly mentally retarded ranges. Both his verbal and nonverbal problem solving skills were found to be within the mildly mentally retarded ranges. Listed below is a summary of his subtest performances on the WAIS-III:

Vocabulary	3
Similarities	5
Arithmetic	5
Digit Span	5
Information	3

Comprehension	3
Picture Completion	5
Digit Symbol	4
Block Design	4
Matrix Reasoning	4
Picture Arrangement	4

Verbal Scaled Score I.Q.	63
Performance Scaled Score I.Q.	64
Full Scaled Score I.Q.	61

(Subtests on the WAIS-III range from a low of 1 to a high of 19.

An average subtest score on the WAIS-III is equal to 10).

Mr. Nardolillo is a right-handed individual. No tremors were noted. His coordination, posture and gait were found to be grossly intact. His responses to the Aphasia Screening Test reflected cognitive and academic delays and deficits. His graphomotor abilities on the Bender Gestalt Test of Visual Perception were found to be within the borderline range. All of his academic skills on the Wide Range Achievement Test were found to be at a below 3rd grade level.

SOCIAL/EMOTIONAL FUNCTIONING: Mr. Nardolillo's history is reportedly negative for physical, emotional or sexual abuse. He does not have a Post Traumatic Stress Disorder.

Mr. Nardolillo's history is reportedly negative for Polysubstance Abuse.

Mr. Nardolillo reports that he does not have any difficulty sleeping. He states that his appetite is fine. He is not experiencing any signs or symptoms of clinical anxiety

or depression. He is not experiencing any suicidal or homicidal ideation.

Mr. Nardolillo is a psychosocially immature 45-5 year old male, who has some difficulty initiating, establishing and maintaining adaptive and trusting interpersonal relationships. His behavior/interpersonal functioning reflect the presence of a characterological disorder (Personality Disorder with Passive Dependent Features). His social, judgment and reasoning skills conceptually were found to be at the 1st percentile for adults his age. He has difficulty detecting the logical sequence of social situations and events (behavioral cause/effect relationships).

Mr. Nardolillo currently lives with his wife in Providence, Rhode Island. They share household chores and Mr. Nardolillo's sister assists with money management. Both Mr. and Mrs. Nardolillo receive social security benefits. Mr. Nardolillo does not have a driver's license. He is capable of taking public transportation. He spends his days at home "hanging around and sleeping." He is capable of attending to his daily personal hygiene needs.

Mr. Nardolillo's responses to projective tasks indicated that he is capable of perceiving the world in generally conventional ways. His responses were found to be rather concrete and reflected his limited cognitive/perceptual abilities. His responses also reflected his psychosocial immaturity.

Mr. Nardolillo is a 45-5 year old male with limited cognitive and academic skills (i.e. mild mental retardation). His social and emotional history is positive for a personality disorder. Mr. and Mrs. Nardolillo have an 18 month old developmentally delayed youngster who is currently in foster care. They have supervised visits with

their child (some of the visits are supervised by his sister and other visits are supervised by D.C.Y.F. personnel). It is reported that a variety of parent/child services have been instituted with "minimal effect." Mr. Nardolillo is a 45 5 year old male with multiple emotional and cognitive difficulties (i.e. Mild Mental Retardation and Personality Disorder). His emotional and cognitive functioning indicates that he has difficulty adequately caring for himself let alone the special needs of a developmentally delayed 18-month-old.

DIAGNOSIS:

Axis I	V71.09	No Diagnosis
Axis II	317.0	Mild Mental Retardation
	301.9	Personality Disorder with Passive/ Dependent and Immature Features
Axis III	None	

RECOMMENDATIONS: For recommendations regarding Mr. Nardolillo's reunification with his daughter, Kayla, see recommendations section on Mrs. Dawn Nardolillo's Psychological Evaluation that was conducted by this examiner (9-28 and 10-10-01).

SJH/dq

Steven J. Hirsch, Ph.D., A.B.P.P.
Clinical Psychologist
Diplomate in Clinical Psychology
American Board of Professional Psychology

APPENDIX C

[LOGO] MENTAL HEALTH SERVICES

A Gateway Healthcare Provider

1443 Hartford Avenue
Johnston, RI 02919
Tel. (401) 273-8100
Fax (401) 861-8696

PSYCHIATRIC EVALUATION

Name:	Client No.:	Date:
Dawn Nardolillo	#000013149	10/11/01

DOB: 9/15/72

IDENTIFYING INFORMATION:

Ms. Nardolillo is a 29-year-old white female interviewed at the request of domestic court and DCYF as part of an ongoing assessment of her capacity to manage raising her youngest child. Psychiatric evaluation consisted of an individual appointment, phone contact with DCYF supervisor and record review.

RECORDS REVIEWED INCLUDED:

DATE	SOURCE	NOTE
8/24/01	CCAP	Letter regarding discharge from Individual Therapy

8/15/01	Children, Friends & Services	Addendum to 8/1/01
8/1/01	Children, Friends & Services/Partners and Permanency	Summary of concerns regarding observations 5/01 – 8/01
8/1/01	Meeting Street School	Letter regarding domestic conflict
7/01	The Providence Center	Parent-Child Assessment
3/20/01	John Hope	Settlement Summary of Parent Aide Services (provided 2/01 – 3/01)
6/00	Spurwink	Summary of Supervised Visits 1/00 – 6/00
11/99	Dr. Hayden	Psychological Evaluation
11/98	Family Services	Summary of Individual Treatment 8/98 – 10/98
10/98	Dolan/Adel	Parent-Child RE:Michelle
5/98	Dr. Parsons	Psychological Evaluation
6/88	Mental Health Services	Psychiatric Evaluation by Dr. Bauermeister
	DCYF	Case Profile Narrative

The nature of this evaluation, the lack of confidentiality and the expectation of a report to the court and DCYF were discussed with Ms. Nardolillo at the beginning of the interview. She appeared to understand and agreed to be interviewed.

HISTORY OF PRESENT ILLNESS:

In reviewing her current status and the history leading to her current situation, Ms. Nardolillo was essentially unable to give any reason whatsoever for her loss of her children. She attempted to attribute blame to a variety of DCYF workers, previous assessments and conflict between her husband and her mother. However, throughout, she was completely unable to articulate the reasons why her child might have been removed in the first place or the reason for ongoing concern by a variety of providers and observers. Her description of her history was grossly divergent from that documented in previous assessments including documentation of her level of function at age 15 and subsequent documentation of her difficulties since then. Her description of her medical conditions diverged from her previous descriptions documented in the record. Her descriptions of her financial status and her interactions with others living in her building diverged from the record, as well.

Ms. Nardolillo denied any significant psychiatric symptoms. She was able to acknowledge distress at the loss of her children. She was not able to discuss that distress. She acknowledged the conflicts between her husband and her mother, but could not discuss any personal response to that conflict.

Ms. Nardolillo has been involved with DCYF for her own care and then resumed involvement regarding her capacity to parent. Records are consistent regarding the frequent expressions of concern by school, therapist and DCYF providers regarding level of disturbed interaction with her mother, evidence of neglect and abuse, recurrent aggression and self-injurious behavior. At the time of Ms.

Nardolillo's first pregnancy (Michelle – 3-years-old) her living conditions (including homelessness, difficulty with her mental state and evidence of continuing to live with her own mother) led to an ex parte removal and non-relative foster placement. Subsequently, on extensive series of observations, attempts to provide training and education regarding parenting and independent assessments of Ms. Nardolillo's psychological capacities were provided. Those observations included the period of her subsequent pregnancy with her daughter Kayla and a period of visitation with both children. Since then, observations have included attempts to provide in-home supervised visits and parenting education.

PAST PSYCHIATRIC HISTORY:

Ms. Nardolillo's record of psychiatric assessment by Dr. Bauermeister in 1988 includes reference to 14 different documents including several psychological assessments and 6 previous psychiatric assessments. At that time, the record was quite consistent indicating a highly pathologic, enmeshed and volatile relationship between Dawn and her mother. Her difficulty with giving an accurate report was already well documented. Her recurrent self-injurious behavior was described. The persistent inability to process the events in her environment which did not fit her overall goals, was also described. Subsequent evaluations, including 2 comprehensive psychological assessments and 2 parent-child assessments, are essentially consistent with that description. Moreover, they are also consistent with subsequent descriptions of her interactions with her children (both Michelle and Kayla). The recurring theme is an essential difficulty with interpreting the behavior of others as indicative of their own needs, capacities and

level of development rather than a projection of her needs, desires or concerns at that time. In addition those records consistently describe an inability to respond to redirection in a meaningful way. She displayed consistent use of distortion, outright lies, "mis-remembering" and evasion in order to proceed with her stated goal.

MEDICAL HISTORY:

Ms. Nardolillo indicates that she suffers from asthma and "emphysema." She reported that she is presently taking "Azmacort, Albuterol and a nebulizer (for an uncertain medication.)" In addition, she indicates that she continues to smoke at least "a half pack a day." She indicated that she had been in a coma secondary to domestic violence in 1997. She reported that she continues to suffer from headaches. She reports a rash when she uses Motrin, but denies any other allergies to medication.

Records indicated no coma history. No other indication of asthma or "emphysema" has been seen in the record or reported.

PSYCHOSOCIAL HISTORY:

Ms. Nardolillo reports that she presently resides with her husband Irving in the second floor apartment where her rep payee lives on the first floor as her landlord. She reports that her mother had served as her rep payee and had lived with them up until a recent stroke. Consequently, her mother is now (reportedly) incapacitated and is unlikely to be able to return to living with her. Ms. Nardolillo reports that her first child, Michelle, lives in the home of Michelle's adoptive parents, Debbie and George,

along with Ms. Nardolillo's younger child Kayla (18 months). She was unable to describe Kayla's development, current psychosocial status or likes and interests. When asked about Kayla's medical needs, she notes that Kayla "wheezes in the summer" and that she now uses a nebulizer. She explained that she had to "use 9-1-1" once due to her breathing difficulties.

Ms. Nardolillo reports that she had initially been sexually abused by her father at around age 8. She then indicated that she had been in DCYF custody between ages 8 and 10 and that she was then released to her father from whom she went AWOL (at 10). She reports then being taken by DCYF to St. Mary's where she remained for a year until she was eventually released to her mother. She notes that her father was then arrested and jailed for the next 3 years. None of those details were corroborated with her record.

Ms. Nardolillo reports that she is presently a student at CCRI where she is studying Daycare for a certificate. She indicated that she had graduated from Cranston East High School with "high honors" from special education classes. She explains that she was in special education because she was "slow in Math" and that she "got nervous" when there were more than 10 children in the room with subsequent decrease in concentration. She describes herself as having fights with her peers after being teased and harassed for her poor handwriting and her clothing. She indicates that she was treated with Ritalin until about age 14. Ms. Nardolillo reports that she has been working at McDonald's for the week prior to this evaluation and that she had previously worked at McDonald's for 6 months, one year ago. She described another job where she had worked doing wrapping and shipping and indicated

that she had worked in daycare in 1991 and 1992 at "Jack and Jill." She indicated that she had been working for Fleet Bank since 1997 doing hourly work and doing piecework for "Dave and Son's" as well as other work doing jewelry soldering, carding and packing.

MENTAL STATUS EXAM:

Ms. Nardolillo presented as a casually dressed coarsely groomed white female who looked approximately her stated age. She sat easily for an extended appointment. Eye contact was good. Speech was somewhat loud with unusual articulation, but she could make herself understood without much difficulty. Rate of her speech was normal with normal rhythm. Language was limited with simplistic descriptions and she had a notable difficulty describing complex interactions or sequences. She denied symptoms of common delusions or hallucinations. She denied disturbance of sleep, appetite or mood with the exception of an assertion that she has ongoing distress over separation from her children. She denied suicidal ideation.

IMPRESSION:

Ms. Nardolillo presented for a court ordered psychiatric evaluation, appeared to understand the purpose of the assessment and that the report would be going directly to court and DCYF. She made her desire of gaining control over her younger child perfectly clear. However, she was essentially unable to describe herself, her child or her living situation in more than a simplistic, sugar coated and generally inaccurate manner. None of her descriptions coincided with other documented reports. There was clear

indication that she had continued to elaborate and expand on previous attempts to blame others for her misfortunes and losses. Despite previous experience with having been penalized for failure to process and for failure to be forthcoming with assessments, she was essentially unable to do so again today.

Previous diagnoses of Mild Mental Retardation vs. Borderline Intellectual Functioning and Personality Disorder are entirely consistent with her presentation. There is no indication of other major mental illness in her presentation to me or in her records. She is likely to continue to have significant difficulty adapting her behavior and expectations to the changing needs of her growing child. Moreover, records suggest that her daughter has already been identified with global delays and will require even more attentive nurturing than most children.

Ms. Nardolillo has not been able to participate in a verbally based therapy up to this point. She is unlikely to be able to do so in the future. She has not developed an empathic parenting style with several years of supervised visits, classes and the consistent threat of permanent loss of her children if she fails to work in these treatments. She has been able to master some basic skills and with support, should be able to continue to learn specific limited mechanical skills needed to parent. However, her lack of empathy and inability to use language truthfully and inflexible approaches to meeting her own needs, are likely to grossly impair her ability to effectively parent her daughter.

DIAGNOSES:

AXIS I	None.
AXIS II	Mild Mental Retardation. Cluster B Personality Disorder, Antisocial and Borderline Features.
AXIS III	Asthma by report and nicotine dependence.
AXIS IV	Problems with legal system.
AXIS V	Current GAF 60.

/s/ David C. Savitzky
David C. Savitzky, MD

APPENDIX D

TITLE 15
Domestic Relations

CHAPTER 15-7
Adoption of Children

SECTION 15-7-7

§ 15-7-7 Termination of parental rights. – (a) The court shall, upon a petition duly filed by a governmental child placement agency or licensed child placement agency after notice to the parent and a hearing on the petition, terminate any and all legal rights of the parent to the child, including the right to notice of any subsequent adoption proceedings involving the child, if the court finds as a fact by clear and convincing evidence that:

(1) The parent has willfully neglected to provide proper care and maintenance for the child for a period of at least one year where financially able to do so. In determining whether the parent has willfully neglected to provide proper care and maintenance for the child, the court may disregard contributions to support which are of an infrequent and insubstantial nature; or

(2) The parent is unfit by reason of conduct or conditions seriously detrimental to the child; such as, but not limited to, the following:

(i) Institutionalization of the parent, including imprisonment, for a duration as to render it improbable for the parent to care for the child for an extended period of time;

(ii) Conduct toward any child of a cruel or abusive nature;

(iii) The child has been placed in the legal custody or care of the department for children, youth, and families and the parent has a chronic substance abuse problem and the parent's prognosis indicates that the child will not be able to return to the custody of the parent within a reasonable period of time, considering the child's age and the need for a permanent home. The fact that a parent has been unable to provide care for a child for a period of twelve (12) months due to substance abuse shall constitute prima facie evidence of a chronic substance abuse problem;

(iv) The child has been placed with the department for children, youth, and families and the court has previously involuntarily terminated parental rights to another child of the parent and the parent continues to lack the ability or willingness to respond to services which would rehabilitate the parent and provided further that the court finds it is improbable that an additional period of services would result in reunification within a reasonable period of time considering the child's age and the need for a permanent home;

(v) The parent has subjected the child to aggravated circumstances, which circumstances shall be abandonment, torture, chronic abuse and sexual abuse;

(vi) The parent has committed murder or voluntary manslaughter on another of his or her children or has committed a felony assault resulting in serious bodily injury on that child or another of his or her children or has aided or abetted, attempted, conspired or solicited to commit such a murder or voluntary manslaughter; or

(vii) The parent has exhibited behavior or conduct that is seriously detrimental to the child, for a duration as

to render it improbable for the parent to care for the child for an extended period of time;

(3) The child has been placed in the legal custody or care of the department for children, youth, and families for at least twelve (12) months, and the parents were offered or received services to correct the situation which led to the child being placed; provided, that there is not a substantial probability that the child will be able to return safely to the parents' care within a reasonable period of time considering the child's age and the need for a permanent home; or

(4) The parent has abandoned or deserted the child. A lack of communication or contact with the child for at least a six (6) month period shall constitute prima facie evidence of abandonment or desertion. In the event that parents of an infant have had no contact or communication with the infant for a period of six (6) months the department shall file a petition pursuant to this section and the family court shall conduct expedited hearings on the petition.

(b) In the event that the petition is filed pursuant to subdivisions (a)(1), (a)(2)(i), (a)(2)(iii), or (a)(2)(vii) of this section, the court shall find as a fact that, prior to the granting of the petition, such parental conduct or conditions must have occurred or existed notwithstanding the reasonable efforts which shall be made by the agency prior to the filing of the petition to encourage and strengthen the parental relationship so that the child can safely return to the family. In the event that a petition is filed pursuant to subdivisions (a)(2)(ii), (a)(2)(iv), (a)(2)(v), (a)(2)(vi) or (a)(4) of this section, the department has no

obligation to engage in reasonable efforts to preserve and reunify a family.

(2) Any duty or obligation on the part of a licensed or governmental child placing agency to make reasonable efforts to strengthen the parental relationship shall cease upon the filing of a petition under this section. This provision shall not be construed and is not intended to limit or affect in any way the parents' right to see or visit with the child during the pendency of a petition under this section.

(3) Upon the filing of a termination of parental rights petition, the agency has an affirmative duty to identify, recruit, process and approve a qualified family for adoption or other permanent living arrangement for the child.

(c) In considering the termination of rights as pursuant to subsection (a), the court shall give primary consideration to the physical, psychological, mental, and intellectual needs of the child insofar as that consideration is not inconsistent with other provisions of this chapter.

(2) The consideration shall include the following: If a child has been placed in foster family care, voluntarily or involuntarily, the court shall determine whether the child has been integrated into the foster family to the extent that the child's familial identity is with the foster family and whether the foster family is able and willing to permanently integrate the child into the foster family; provided, that in considering integrating into a foster family, the court should consider:

(i) The length of time child has lived in a stable, satisfactory environment and the desirability of maintaining that environment and continuity for the child; and

(ii) The reasonable preference of the child, if the court determines that the child has sufficient capacity to express a reasonable preference.

(d) If the court finds that the parental rights of the parent should be terminated as specified in subsection (a), it shall by decree duly entered, appoint some suitable person to give or withhold consent in any subsequent adoption proceedings. In the case of petitions filed by licensed or governmental child placement agencies, the court shall appoint the agency to be the sole party to give or withhold consent to the adoption of the child and further vest the agency with all rights of guardianship over the child.

(e) Nothing in this section shall be construed to prohibit the introduction of expert testimony with respect to any illness, medical or psychological condition, trauma, incompetency, addiction to drugs, or alcoholism of any parent who has exhibited behavior or conduct that is seriously detrimental to a child, to assist the court in evaluating the reason for the conduct or its probable duration.

(f) The record of the testimony of the parties adduced in any proceeding terminating parental rights to a child shall be entitled to the confidentiality provided for in § 8-10-21 and more specifically shall not be admissible in any civil, criminal, or other proceeding in any court against a person named a defendant or respondent for any purpose, except in subsequent proceedings involving the same child or proceedings involving the same respondent.

(g) In the event any child, the parental rights to whom have been finally terminated, has not been placed by the agency in the home of a person or persons with the intention of adopting the child within thirty (30) days from the date of the final termination decree, the family court shall review the status of the child and the agency shall file a report that documents the steps the agency is taking to find an adoptive family or other permanent living arrangement for the child, to place the child with an adoptive family, a fit and willing relative, a legal guardian, or in another planned permanent living arrangement, and to finalize the adoption or legal guardianship. At a minimum, this documentation shall include child specific recruitment efforts, such as the use of state, regional and national adoption exchanges, including electronic exchange system.

APPENDIX E

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **FAMILY COURT**

IN RE: KAYLA FC NO. P **01-0101**

JUDGMENT

This matter came on for hearing, before the Honorable Justice John A. Mutter on the Petition filed by the Department of Children, Youth, and Families (DCYF), for Termination of Parental Rights. After hearing thereon and consideration thereof, the Court made the following findings of fact and rendered a written decision on the 22nd day of January, 2003, which is attached hereto and incorporated herein.

1. The child, Kayla, was born April 13, 2000.
2. Kayla was the first child fathered by the Respondent Father, although this was his third marriage.
3. The Respondent Mother, prior to the birth of Kayla, had given birth to another child named Michelle, who had been fathered by another man. In 1998, the Respondent Mother, did a voluntary consent as to this child, who was adopted by her foster parents.
4. At the time of Kayla's birth, there were no relatives of the biological parents with whom she could be placed, though the Department of Children, Youth and Families made efforts to place the child in relative foster placement.
5. Kayla reportedly has certain developmental delays.

6. By expert testimony, both of the biological parents have been described as mildly, retarded.

7. Kayla, upon her release from the hospital at age thirteen days, was placed with the same foster parents who had adopted her half-sister. Kayla remains in that same placement to the present time.

8. On December 1, 2001, the Respondents admitted to an allegation of dependency based upon their cognitive limitations.

9. A Petition for Termination of Parental Rights was filed on January 10, 2002.

10. In April of 2002, a Petition for Adoption was filed, signed by the Respondent Father's sister, Sandra.

11. The Respondents, after the commencement of hearing on the Termination Petition, sought the intervention of the Rhode Island Supreme Court, requesting that the Supreme Court order the Adoption Petition be given a priority hearing. The higher court ordered that both petitions be entertained by this Court at the same time.

12. Expert testimony established that the Respondents cannot care for Kayla without constant on-site supervision.

13. Both Respondent parents have testified and both have admitted substantially what the experts have averred.

14. The petitioning aunt in the adoption matter testified that, in her opinion, her brother cannot care for the child without the help specified by the experts.

15. This Court is of the opinion that the inability to act or react to a situation which could imperil the child and ultimately cause harm to the child, constitutes unfitness.

16. The Court finds that there is no probability that Kayla could safely be returned to her parents' care, considering the mental and emotional condition of the parents and the special needs of this child, including the need for a permanent, safe and stable home, within a reasonable period of time.

17. The Court finds, by clear and convincing evidence, that the Respondent parents are unfit.

18. The Court finds that the grounds for termination have been proven by clear and convincing evidence.

19. The Court finds that it is in the best interests of the child, Kayla, that the parental rights of the Respondents be terminated.

WHEREFORE, the following is,

ORDERED, ADJUDGED, AND DECREED

1. The parental rights of the Respondent mother, Dawn Nardolillo, are hereby terminated.

2. The parental rights of the Respondent father, Irving Nardolillo, are hereby terminated.

3. The Department of Children, Youth, and Families shall be the sole party to give or withhold consent to the adoption of this child.

4. The Department is appointed as Guardian of the child for all purposes.

ENTERED: PER ORDER:

/s/ D. Montanaro /s/ Mutter, J.
Dep. Clerk

Presented by:

Department of Children, Youth and Families,
By and through its Counsel,

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(401) 528-3566 facsimile

CERTIFICATION

The undersigned hereby certifies that a true copy of the within was mailed to the following Counsel of Record, on this 11th day of February, 2003.

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APPENDIX F

STATE OF RHODE ISLAND
AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC — SUPREME COURT

IN RE KAYLA N. — M.P. #2002-313
FC #1998-00336-02
Pet. #02-0000-342

ORDER

This matter came before the Honorable Supreme Court Justice Bourcier on May 23, 2002 for conference on a joint Emergency Motion for Stay and on a joint Petition for Writ of Certiorari filed by Dawn Nardolillo and Irving Nardolillo (the biological parents of Kayla N., born 4/13/00), and by Sandra Nardolillo (Kayla's paternal aunt). Following said conference it is hereby ORDERED, ADJUDGED, AND DECREED that:

1. The petitioners' Petition for Writ of Certiorari is GRANTED;
2. The Family Court shall hear the petitioners' petition for direct consent adoption;
3. The hearing on the direct consent adoption petition shall be consolidated with the termination of parental rights hearing, currently scheduled for May 24, 2002.
4. Sandra Nardolillo, Kayla's paternal aunt, has standing in the adoption petition;
5. Kayla's non-relative foster caretakers do ***not*** have standing in this matter;
6. The petitioners' Emergency Motion for Stay is DENIED

ORDERED:

/s/ [Illegible]
SUPREME COURT
CLERK

ENTERED:

/s/ Bourcier, J.
SUPREME COURT
JUSTICE
DATED: 5/23/02